

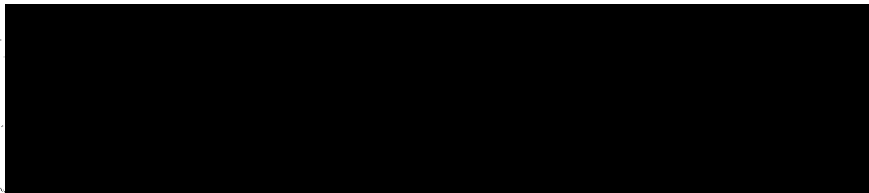
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U.S. Department of Homeland Security
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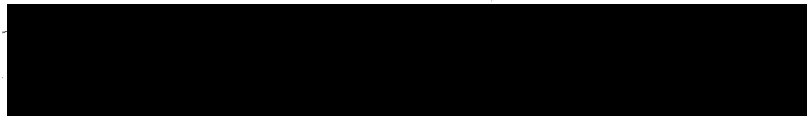


U.S. Citizenship
and Immigration
Services



FILE: LIN 02 198 52604 Office: NEBRASKA SERVICE CENTER Date: **MAR 10 2004**

IN RE: Petitioner:
Beneficiary:

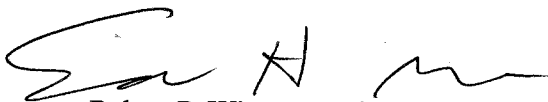


PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional. The petitioner is a legal services firm. It seeks to employ the beneficiary as an associate attorney. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that it had the continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition. The director also determined that the petitioner had not established that the beneficiary had the requisite experience as of the priority date of the visa petition.

On appeal, the petitioner submits additional evidence and maintains that it has had the continuing ability to pay the proffered wage. The petitioner also asserts that the evidence shows that the beneficiary has accrued the required employment experience as required by the terms of the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii) provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The regulation at 8 C.F.R. § 204.5(g)(2) provides in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

Eligibility in this case rests upon whether the petitioner has established that the beneficiary possesses the requisite qualifications for the position and whether the petitioner's continuing ability to pay the wage offered has been established as of the petition's priority date. The priority date is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. 8 C.F.R. § 204.5(d). Here, the petition's priority date is October 5, 2001. The beneficiary's salary as stated on the labor certification is \$50,000 per annum. The visa petition indicates that the petitioner was established in 1996 and has five employees. It is organized as a corporation.

The petitioner initially submitted no evidence of its ability to pay the proffered wage. On August 12, 2002, the director requested additional evidence in support of the petitioner's ability to pay the beneficiary's wage offer of \$50,000 per year. The director instructed the petitioner that it must submit its latest federal tax return, audited financial statement or annual report. The director also requested evidence that the petitioner had completed one year in the job offered (associate attorney) as of the visa priority date as required by the terms of the approved labor certification.

In response to the director's request, the petitioner submitted a copy of an unaudited balance sheet and income statement as well as a copy of its 2001 Form 1120-A, U.S. Corporation Short-Form Income Tax Return. This tax return reflects that the petitioner files its tax returns on a standard calendar year basis. It shows that the

petitioner declared \$108 in taxable income before net operating loss (NOL) deduction and special deductions. Schedule L of the tax return indicates that the petitioner had \$5,146 in current assets and -\$8,229 in current liabilities. The difference of -\$3,083 represents the petitioner's net current assets or level of liquidity at the end of the filing year. Net current assets are assets that could reasonably be expected to be converted to cash or cash equivalents within the year to be available to pay the proffered wage. Here, even if the beneficiary's proposed salary were prorated to reflect that portion of the proffered salary required to be paid beginning as of the visa priority date of October 5, 2001 until the end of 2001, neither the petitioner's taxable income, nor its net current assets are sufficient to cover the remaining \$7,808 portion of the beneficiary's salary.

The petitioner also provided a copy of a letter, dated October 13, 1998, from the Tancino Law Offices in San Francisco, California in support of the beneficiary's experience as an associate attorney. This letter appeared to have been originally submitted in support of the Tancino Law Offices' petition seeking a non-immigrant H1-B visa on behalf of the beneficiary.

The director denied the petition, concluding that the petitioner had failed to provide sufficient evidence establishing its continuing ability to pay the proffered wage or that it had sufficiently documented the beneficiary's prior employment experience as an associate attorney. The director noted that petitioner's 2000 corporate tax return showed that the petitioner's net income of \$108 was well below the \$50,000 per year required by the terms of the approved labor certification. The director also found that the unaudited income statement and balance sheet submitted with the petitioner's response to the director's request for additional evidence was not competent evidence as required by 8 C.F.R. § 204.5(g)(2). The AAO concurs. The regulation requires audited financial statements, federal tax returns, or annual reports. While additional evidence may be considered, unaudited financial statements offer little probative value because they represent only a petitioner's opinion of its financial status.

The director also determined that neither the beneficiary's resume nor the 1998 Tancino Law Offices letter sufficiently corroborated the beneficiary's completion of one-year of experience as an associate attorney, as required by Item 14 of the approved labor certification.

On appeal, the petitioner asserts that the beneficiary's H-1B visa and extension to October 1, 2004 already establishes the beneficiary's required one-year of experience as an associate attorney. The petitioner also submits a certification from the Tancino Law Offices, dated January 16, 2003, which corroborates the beneficiary's employment as an associate attorney since December 1998. This evidence appears to satisfy the director's concerns regarding the beneficiary's work experience.

With regard to the petitioner's continuing ability to pay the beneficiary's proffered wage of \$50,000 per year, the petitioner has provided audited financial statements for the period January 1, 2002, through December 31, 2002. They indicate that the petitioner produced \$67,525 in net income. This is sufficient to cover the beneficiary's proposed wage offer of \$50,000 per year for that period of time. Although the accountant's management letter accompanying the audited materials describes the limitations of the audit's scope, it also notes that the petitioner showed a cash reserve of \$9,445 as of the end of 2001. This appears to be sufficient to have covered the fifty-seven day period of the prorated portion of the beneficiary's proffered salary from the visa priority date of October 5th through December 31, 2001. Thus, the petitioner has established its ability to pay the beneficiary's wage offer of \$50,000 per year.

Accordingly, the AAO concludes that the petitioner has established that it had the continuing ability to pay the beneficiary's wage as of the priority date and has established that the beneficiary accrued the requisite work experience required by the terms of the approved labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.